Clarke County

PLANNING COMMISSION REGULAR MEETING MINUTES 2011 November 4



A regular meeting of the Planning Commission of Clarke County, Virginia, was held at the Town/County Joint Government Center, Berryville, Virginia, on Friday, 2011 November 4.

Chair Ohrstrom called the meeting to order at 9:04 a.m.

ATTENDANCE

George Ohrstrom, II; Chair; Anne Caldwell, Vice Chair; Clay Brumback, Scott Kreider, Cliff Nelson, Chip Steinmetz, Richard Thuss and Jon Turkel.

ABSENT

A.R. Dunning, Jr., Tom McFillen and Bev McKay

STAFF

Jesse Russell, Acting Planning Director and Zoning Administrator; and Debbie Bean, Recording Secretary.

APPROVAL OF AGENDA

The Commission voted unanimously to approve the agenda as presented.

Yes: Brumback, Caldwell (seconded), Kreider, Nelson (moved), Ohrstrom, Steinmetz, Thuss and

Turkel

No: No one

Absent: Dunning, McFillen and McKay

APPROVAL OF MINUTES

The Commission voted to approve the minutes of 2011 September 2 with one correction.

Yes: Brumback, Caldwell, Kreider, Nelson, Steinmetz (seconded) and Thuss (moved)

No: No one

Absent: Dunning, McFillen and McKay

Abstained: Ohrstrom and Turkel

The Commission voted to approve the briefing meeting minutes of 2011 October 4.

Yes: Caldwell (moved), Kreider (seconded), Nelson, Ohrstrom, and Thuss

No: No one

Absent: Dunning, McFillen and McKay

Abstained: Brumback, Steinmetz and Turkel

The Commission voted to approve the regular meeting minutes of 2011 October 7.

Yes: Brumback, Caldwell (moved), Kreider, Ohrstrom, and Thuss (seconded)

No: No one

Absent: Dunning, McFillen and McKay **Abstained:** Nelson, Steinmetz and Turkel

MAJOR SUBDIVISION - CONT'D PUBLIC HEARING

H. Robert Showers, Attorney for Salvation Army (Ron Mislowsky, Engineer, PHR&A Agent) requests approval for a 22-lot subdivision for Tax Map Parcels 13-((A))-13 [6 tracts] and 13-((A))-56 located at 642 Westwood Road, Russell Election District, zoned Agricultural Open-Space-Conservation (AOC). S-08-01

Mr. Russell explained this request. He said that at the October meeting the applicant requested an extension until November 1st to submit the required karst plan. He stated that due to poor weather conditions the applicant had been unable to finish up fieldwork. He said the Commission granted the extension. He stated that the karst plan was submitted to the office by the November 1st deadline. He said that Alison Teetor, the County's Natural Resource Planner has reviewed the karst plan and her initial comments are that the plan appears to be in compliance with our requirements for karst plan. He said the karst plan has been sent to Dan Rom, the County's geotechnical engineer for his review. He stated Mr. Rom has contacted him and reported that he should have his comments in to us by November 15th. He stated that the applicant has requested a waiver for the entire consumer disclosure statement. He said that Robert Mitchell, the County Land Use attorney is currently out of town but he will review this request on his return. He stated that since the Commission will not be acting on this request until the December Planning Commission meeting it would allow Mr. Mitchell time to review this request before that meeting.

Chair Ohrstrom asked the Commission for their comments on this request. Commissioner Steinmetz and Commissioner Thuss asked questions about the Consumer Disclosure Statement.

John Farrell, McCandlish & Lillard, legal counsel representing the Salvation Army, was present to answer questions. He expressed that there are three issues of concern with the Consumer Disclosure Statement:

- 1. He said the first is requiring the recordation of this document because it becomes part of the chain of title permanently. He questioned if there is authority from the General Assembly to require recordation of such a document? He stated that he could not find it in the statute. He said he has been discussing this issue with the County attorney, Robert Mitchell. He said he could not find any other locality in the State of Virginia that conditions subdivision approval on the recordation of such a document.
- 2. He said the Salvation Army is going to be selling these lots off; they are not building houses. He stated that a title company looks at this record as a permanent item even though things will change over time it always will be a permanent record as it was recorded at the time it was sold. He said the problem is not the document it is having the document recorded. He asked if things change do we have to come before the Planning Commission for approval again. He said that the General Assembly does not require a Consumer Disclosure Statement to be recorded. He questioned "why put a cloud on the title"?
- 3. He asked who really benefits from the Consumer Disclosure Statement. He said he has been discussing this with Mr. Mitchell so there is not a cloud on the title. He stated that in the draft Consumer Disclosure Statement he is trying to accommodate the Planning Commission. He stated that if the Zoning Ordinance changes the title company would say that this is a covenant.

He stated that a draft Consumer Disclosure Statement was submitted to the Planning Department on October 31st. In this draft Consumer Disclosure Statement it states, "the following is provided for

information purposes only, does not constitute a representation or warranty to any party and does not constitute a restrictive covenant. The information is correct as of the date of this document but it is subject to change at any time and without notice". He stated that this wording was put on the draft consumer disclosure statement to ensure that it says it is not a representation, it is not a warranty and it is not a restrictive covenant it is for information only.

Chair Ohrstrom said when Mr. Mitchell returns from his vacation we will need to discuss this issue with him before a decision is made.

Chair Ohrstrom asked for public comments.

Barbara Byrd, Board of Supervisor for Russell District, was present and stated that she was here to speak for her constituents and taxpayers in her district. She stated that she thinks that not to ask for full disclosure does a disservice to the people of the County that have to abide by what the Planning Commission requires before action is taken on an application. She thinks it is a disservice to the rest of the County and especially to her constituents and the people that live close by not to know full disclosure on this. She stated that not to ask for full disclosure means there is a cloud over it and not in the bright sunshine. She said it is the Planning Commission's duty to treat everyone fairly.

There being no further public comments Chair Ohrstrom asked the Commission for comments.

Commissioner Steinmetz stated that he was in receipt of an email from Robina Bouffault yesterday in regards to some concerns she had which were similar to Mrs. Byrd's comments regarding this request. He said he would not address the entire email but he would like to discuss some of the comments of the email with the Planning Commission. He said that he wanted to assure the Commission and Ms. Bouffault that he would decline from any deliberations or public comments regarding this request if there is ever any reason to do so. He also stated that he is not employed by Remax. He stated that he is disappointed that a Commissioner or staff member in attendance at the briefing meeting on Tuesday saw fit to substitute his investigation and questioning of the issues before the Planning Commission as personal opinion. He said he was just looking into the facts and trying to understand the purpose and issues before us. He stated he believes that we as public officials should be held to a higher standard when it comes to implying, conferring, impugning or some how characterizing any individuals interests and motivations but particularly those who hold positions of public trust. He said that in the absence of facts one does not need to be a conspiracy.

There being no further comments, Chair Ohrstrom called for a motion.

The Commission voted unanimously to postpone action and continue the public hearing until the next regular meeting of the Commission on 2011 December 2.

Yes: Brumback, Caldwell (seconded), Kreider, Nelson (moved), Ohrstrom, Steinmetz, Thuss and Turkel

No: No one

Absent: Dunning, McFillen and McKay

TEXT AMENDMENT - PUBLIC HEARING

The Clarke County Planning Commission will consider the amendment of the County Zoning Ordinance: Section 3-A-13-c, *Minimum Yard Requirements in the Highway Commercial Zoning District*, so as to eliminate building setback requirements from secondary highways;

Section 3-E-4-e, Design Criteria for that portion of the Historic Access Corridor Overlay District outside of the boundaries of the Berryville Area Plan, so as to:

- encourage the retention of the architectural character of existing commercial structures in the overlay district,
- encourage a traditional pattern of commercial development (with a grid network of streets and buildings directly fronting on these streets) in the commercially zoned areas at the Waterloo and Double Tollgate intersections, and
- more clearly re-state some of the Criteria.

Section 6-H-1, Improvements and Minimum Standards for Site Plans so as to establish standards for a grid network of secondary public highways with on-street parking, sidewalks, and street trees in the commercially zoned areas at the Waterloo and Double Tollgate intersections.

TA-11-08

Mr. Russell stated that he would go over the above amendment sections one at a time. He stated that Section 3-A-13-c, was set up to have minimum yard requirements in the Highway Commercial Zoning District. He said that some retail businesses (not including vehicular sales and gas sale businesses which need to be set back) are set further back on their property than others. He stated that this amendment would correct that problem.

He explained Section 3-E-4-e Design Criteria for that portion of the Historic Access Corridor Overlay District outside of the boundaries of the Berryville Area Plan, has been reviewed by Maral Kalbian, County Architectural Historian. He said all is in agreement on this amendment and that these are items of minor housekeeping and language changes. He said that there is one issue in this amendment that goes into Section 6-H-1 in regard to the Highway Commercial zoned areas at Waterloo and Double Tollgate areas. He said he agrees with the basic design of the architecture in the last two parts of this text amendment but that in regard to the street scape requirement in the Highway Commercial area we may want to give this amendment more consideration and not move forward right away on this. He said we are still studying the Waterloo and Double Tollgate areas for water and sewer. He stated that in a highly urbanized area this amendment would make perfect sense but Clarke County is not highly urbanized at this time. He said that by taking action on this amendment would be like putting the cart before the horse. After discussion with staff and the Commission, Chair Ohstrom asked for public comments.

There being no further public comments Chair Ohrstrom asked the Commission for comments.

Several Commissioners had questions regarding the language in Section 3-E-4-e. Mr. Russell said that he would contact Maral Kalbian and ask her to attend the next Planning Commission meeting on 2011 December 2. He said Ms. Kalbian could answer questions from the Commission in regard to this amendment.

There being no further comments, Chair Ohrstrom called for a motion.

The Commission voted to postpone this agenda item until the next regular meeting of the Commission on 2011 December 2.

Yes: Brumback (moved), Caldwell, Kreider (seconded), Nelson, Ohrstrom, Steinmetz, Thuss and Turkel

No: No one

Absent: Dunning, McFillen and McKay

<u>Board/Committee Reports</u> Board of Supervisors – Pete Dunning Mr. Hobert stated that the internet tower amendment was approved with a change on the sunset provision from five years to three years.

Sanitary Authority - Pete Dunning Nothing to report.

Board of Septic & Well Appeals - Pete Dunning Nothing to report.

Board of Zoning Appeals - Anne Caldwell Nothing to report.

Historic Preservation Commission - Cliff Nelson

Mr. Nelson stated that the next meeting is scheduled for November 22nd. He stated that the 150th Committee on the Sesquicentennial of the American Civil War and Emancipation will be having their first event on December 10th at The Barns of Rose Hill. He said that Mr. Russell could give details about the event. Mr. Russell stated that this will be the kick off event and that the Committee is working on a flyer that will be available soon. He said the event is geared toward civilians and the conditions in which they were living in at the start of the Civil War. He stated that the event is also geared to look at things in light of African Americans who obtained their independence at the time of the Civil War. He said that the event will be free and food, wine and cider will be available which will be prepared in similar fashion to the 1800's time period. He stated that the Garden Club is planning on doing Christmas decorations for the event using the same type of decorations that were used in that era. He stated that there will be different musical instruments from that era being played at the event and also a brief talk is planned about the history of the county leading up to the Civil War. He said the Committee hopes to get one of the African American churches and one of the white churches in the County to attend the event. He said this will be a unique event not just for the County but also for the state of Virginia.

Conservation Easement Authority - George L. Ohrstrom, II Chair Ohrstrom stated that the Authority is working on closing several easements before the end of the year.

Staff Reports

Natural Resource Activities - Alison Teetor Nothing to report.

Enforcement Officer - Nancy Olin See staff report.

There being no further discussion, the meeting was adjourned at 10:05 a.m. until the next regular meeting of the Commission on 2011 December 2.

George L. Ohrstrom, II, Chair

Minutes prepared by Debbie Bean, Recording Secretary

Jesse Russell, Acting Clerk